

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In Re: BRADLEY T SMITH : Case No. 05-74493
: Chapter 13
Debtor(s) : Judge Hoffman

MOTION TO DISMISS CASE

Now comes Frank M. Pees, standing Chapter 13 Trustee and requests entry of an order dismissing this case pursuant to 11 U.S.C. §1307(c) for the reason(s) set forth below.

MEMORANDUM

The Order confirming the Chapter 13 Plan in this bankruptcy case limits the duration of the plan to sixty (60) months. Debtor(s)' plan currently projects to 69 +. The plan is in violation of 11 U.S.C. §1322(d) and the Order confirming the Chapter 13 Plan. .

The violation of the sixty (60) month limit on plan duration constitutes a material default under the confirmed plan pursuant to 11 U.S.C. §1307(c)(6). Accordingly, the Trustee requests that an Order be entered dismissing this case, granting the Trustee leave to file his Final Report, and discharging the Trustee from his trust.

Respectfully submitted,

\s\ Frank M. Pees _____
Frank M. Pees
Chapter 13 Trustee
130 E. Wilson Bridge Road #200
Worthington, Ohio 43085-6300
(614) 436-6700

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: Chapter 13
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NOTICE OF MOTION TO DISMISS

The Chapter 13 Trustee has filed papers with the Court to dismiss this case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to dismiss this case, then on or before **twenty (20) days from the date set forth below**, you must file with the Court a response explaining your position by mailing your response by regular U.S. Mail to Clerk, U.S. Bankruptcy Court, 170 N. High Street, Columbus, Ohio 43215 OR your attorney must file a response using the Court's ECF System.

The Court must **receive** your response on or before the date set forth above.

You must also send a copy of your response either by 1) the Court's ECF System or 2) regular U.S. Mail to:

Frank M. Pees
Chapter 13 Trustee
130 E. Wilson Bridge Road #200
Worthington, Ohio 43085-6300

United States Trustee
170 N. High Street, #200
Columbus, Ohio 43215

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

If a response is filed within the time provided above, then a hearing will be held at **2:00 pm.** on **Tuesday, December 1, 2009**, at the **United States Bankruptcy Court, 170 N. High Street, Columbus, Ohio 43215** in **Courtroom A**. If no response is filed within the time provided, **then no hearing will be held.**

Dated: **Thursday, October 15, 2009**

Signature: \s\ Frank M. Pees _____
Chapter 13 Trustee
130 E. Wilson Bridge Road #200
Worthington, Ohio 43085

SERVE ALL PARTIES